

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

JASON C. GIVENS

Plaintiff,

v.

HSBC MORTGAGE SERVICES,

Defendant.

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CASE NO. 08-10985

HON. MARIANNE O. BATTANI

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND  
RECOMMENDATION, DENYING PLAINTIFF'S MOTION FOR A TEMPORARY  
RESTRAINING ORDER, DISMISSING PLAINTIFF'S AMENDED COMPLAINT AND  
REMANDING THE CASE TO STATE COURT**

**I. INTRODUCTION**

Before the Court are Plaintiff Jason Givens' Objections to Magistrate Judge R. Steven Whalen's Report and Recommendation (Doc. #15). Plaintiff objects to the Magistrate Judge's determinations that (1) Plaintiff's removal is improper, (2) Plaintiff's amended complaint is frivolous, and (3) Plaintiff's motion for a TRO should be denied. For the reasons discussed below, the Court **ADOPTS** the R&R (Doc #14) in its entirety, **DENIES** Plaintiff's Motion for a TRO (Doc. # 6), **DISMISSES WITH PREJUDICE** Plaintiff's Amended Complaint (Doc. # 9), **DENIES** Plaintiff's Motion for Recusal (Doc. #15), **STRIKES** Plaintiff's Notice of Appeal (Doc. # 23), and **REMANDS** the case to state court.

## II. STANDARD OF REVIEW

A district court must conduct a *de novo* review of the parts of a magistrate judge's report and recommendation to which a party objects. 28 U.S.C. § 636(b)(1). The district "court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate" judge. *Id.* The requirement of *de novo* review "is a statutory recognition that Article III of the United States Constitution mandates that the judicial power of the United States be vested in judges with life tenure." United States v. Shami, 754 F.2d 670, 672 (6th Cir. 1985). Accordingly, Congress enacted 28 U.S.C. § 636(b)(1) to "insure[] that the district judge would be the final arbiter" of a matter referred to a magistrate. Flournoy v. Marshall, 842 F.2d 875, 878 (6th Cir. 1987).

## III. ANALYSIS

This suit was originally brought by Defendant HSBC against Plaintiff in 36<sup>th</sup> District Court for the City of Detroit regarding Plaintiff's alleged mortgage default. Plaintiff filed a Notice of Removal, elected to proceed *in forma pauperis*, and subsequently filed an Motion for a Temporary Restraining Order to stop the state court proceedings. Plaintiff also filed a seven-count complaint (called the "Amended Complaint", although there was no complaint filed by Plaintiff in the first place) against Defendant, Decision One Mortgage, Wells Fargo Bank, JP Morgan Mortgage Trust, and the law firm of Trott & Trott, P.C., alleging breaches of the constitution, the Fair Debt Collection Practices Act, and other assorted violations.

The Magistrate Judge issued a Report and Recommendation on June 26, 2008, recommending denial of the motion, dismissal of the Amended Complaint, and remand of the case. Judge Borman, to whom this case was initially assigned, disqualified himself and the case

was reassigned to this Court.

**A. Removal**

Plaintiff does not object to the Magistrate Judge's recommendation that the removed complaint be dismissed. Because Defendant's complaint is based entirely in state law, the Court finds that removal is improper, and remands the case to the 36<sup>th</sup> District Court.

**B. Amended Complaint**

Plaintiff's only objection to the recommended dismissal of his seven-count amended complaint is that the parties he has brought suit against – several banks and a law firm – are debt collectors within the meaning of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, for Count I of his Amended Complaint. Plaintiff is patently wrong here, as it is well settled that the provisions of the FDCPA apply only to professional debt collectors, not creditors or mortgagors. 15 U.S.C. § 1692a(6); see Scott v. Wells Fargo Home Mortgage, 326 F.Supp.2d 709, 717 (E.D. Va. 2003); Pollice v. National Tax Funding, 225 F.3d 379 (3d Cir. 2000); Perry v. Stewart Title Co., 756 F.2d 1197 (5th Cir.1985). As Defendants are not debt collectors under the FDCPA, Plaintiff's FDCPA claim should be dismissed. As Plaintiff does not object to any other part of the Magistrate Judge's recommended dismissal, and because the Magistrate Judge is correct to rule that Plaintiff's claims are frivolous, the Court dismisses Plaintiff's Amended Complaint under 28 U.S.C. § 1915(e)(2).

### **C. TRO**

The Magistrate Judge found that Plaintiff did not show a strong likelihood of success on the merits – indeed, that there was “no likelihood of [Plaintiff’s] success on the claims” – and recommended denial of the motion for a TRO. Plaintiff’s objections to the Magistrate Judge’s determinations consist largely of accusing the Magistrate Judge of bias, without presenting any kind of evidence of bias beyond insinuation (“in a rush to exercise his personal feeling”). Because Plaintiff has shown no likelihood of success on the merits in either the removed complaint or the amended complaint, and because simply ruling against a party does not constitute bias on the part of the Magistrate Judge, the Court adopts the R&R on this point, and denies Plaintiff’s motion for a temporary restraining order.

### **D. Motion for Recusal**

Plaintiff has filed, with his objection, a motion for recusal of Magistrate Judge R. Steven Whalen. This motion is both frivolous and moot, considering that the Magistrate Judge has already issued his recommendation and this Court is dismissing and remanding Plaintiff’s claims. As such, this motion is denied.

### **E. Notice of Appeal**

Finally, Plaintiff has filed a “Notice of Appeal”, shortly after filing his objection to the Magistrate Judge’s Report and Recommendation. Appeals may only be taken from final decisions, and the recommendation of the Magistrate Judge is not a final decision. 28 U.S.C. § 636(b)(1). Therefore, this notice of appeal is stricken.

#### **IV. CONCLUSION**

For the reasons set forth above, the Report and Recommendation of June 26, 2008 is **ADOPTED**. Accordingly, Plaintiff's Motion for a TRO (Doc. # 6) is **DENIED**, and Plaintiff's Amended Complaint (Doc. # 9) is **DISMISSED WITH PREJUDICE**. Furthermore, Plaintiff's Motion for Recusal (Doc. #15) is **DENIED**, and Plaintiff's Notice of Appeal (Doc. # 23) is **STRICKEN**. The case is hereby **REMANDED** to the 36<sup>th</sup> District Court for the City of Detroit.

**IT IS SO ORDERED.**

s/Marianne O. Battani  
MARIANNE O. BATTANI  
UNITED STATES DISTRICT JUDGE

DATED: August 26, 2008

#### **CERTIFICATE OF SERVICE**

Copies of this Order were served upon counsel of record on this date by ordinary mail and/or electronic filing.

s/Bernadette M. Thebolt  
DEPUTY CLERK